IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2012 OF 2004

Shaikh Zuber Babu ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

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Mr.Uday Warunjikar for Petitioner.

Mr.S.R.Shinde, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

NOVEMBER 22, 2004.

P.C.

1. Heard Counsel for the parties.

2. The first point raised before this Court is that the show cause notice issued to the Petitioner suffers from vagueness. It is argued that although the other details about the incident in question are given, but the place where the incident occurred, has not been specifically referred to in the show cause notice. To my mind,

there is no substance in this submission. The notice does refer to the relevant materials, including time and date of the incident. Merely because the place of the incident is not specifically mentioned in the show cause notice, that will make no difference and the entire proceedings cannot be said to have been vitiated on that count. Counsel for the Petitioner relies on the decision of the Supreme Court reported in **AIR 1973 SC 630 in the case of Pandharinath Shridhar Rangnekar v. Dy.Commissioner of Police, State of Maharashtra.** However, in my opinion, the observations in this decision clearly answers the issue against the Petitioner. The Apex Court has observed that in the show cause notice under Section 56 of the Act, what is required to be stated is the material allegations against the proposed externee and their general nature and he is not entitled to be informed of specific particulars relating to the material allegations. In the circumstances, the argument that the place of incident is not specifically mentioned in the show cause notice, does not commend to me. Reliance was also placed on the decision of our

High Court reported in **1989 (3) Bom.C.R. 240 in the case of Shri Yeshwant Damodar Patil vs. Shri Hemant Karkar, Dy.Commissioner of Police & Anr.** However, the proposition considered in the said decision was that the authorities were oblivious to the distinction between Section 56(1)(a) and first part of Section 56(1)(b) of the Act. In the present case, that issue does not arise because the notice specifically refers to Section 56(1)(b) and the materials relied to support the proposed action also would fortify the position as would be required under Section 56(1)(b) of the Act. Accordingly, even this decision is of no avail to the Petitioner.

3. It was next argued that the order passed by the Authority makes out new ground against the Petitioner. Reference was made to the order which states that the Petitioner was threatening the residential shopkeepers, which aspect was not specifically adverted to in the show cause notice. There is no substance even in this submission. In the penultimate paragraph of the show cause notice, clear reference has been made by the Authority that

the Petitioner was threatening the local residents, businessmen, shopkeepers, etc. In the circumstances, there is no substance in this submission.

4. It was next argued that out of the six instances referred to by the authority below, three could not have been taken into account as instance at Serial No.2 was an offence punishable under the provisions of the Bombay Police Act and instances at Serial Nos.5 and 6 were only non-cognizable complaints. This submission, however, overlooks that the show-cause notice clearly refers to the offence which are covered under Chapter 16 of the Indian Penal Code, which obviously can be the foundation for action under Section 56 of the Act. Accordingly there is no substance even in this submission.

5. It was lastly argued that the order of externment requiring the Petitioner to remove himself from the entire District of Pune as well as Pune City Commissionerate is excessive. In the first place, no such grievance was made before the

Authority below. Indeed, this question is a mixed question of fact and law. The Petitioner cannot be permitted to raise such a plea, for the first time, in writ jurisdiction, if the same was not raised before the Appellate Authority in the statutory appeal available to the Petitioner.

6. In the circumstances, I see no reason to interfere. Dismissed.

A.M.KHANWILKAR, J.